

EXHIBIT A

ORIGINAL

1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

XEROX CORPORATION :

Plaintiff :

Vs. :

CIVIL ACTION NO.

PHOENIX COLOR CORPORATION :

L 02CV 1734

and :

TECHNIGRAPHIX, INCORPORATED :

Defendants :

Deposition of ROSALIA T. GIANOLA, taken
on Tuesday, March 4, 2003, at 12:40 p.m., at the
law offices of Piper Rudnick, LLP, 6225 Smith
Avenue, Baltimore, Maryland, before Bonnie L.
Russo, Notary Public.

Reported by:

Bonnie L. Russo

CRC-SALOMON
Baltimore, Maryland
Phone (410) 821-4888 Fax (410) 821-4889

1 Q. Let's go through the first customer
2 number, the folder that you gave me, 304744204.

3 I will show you this folder and ask you
4 to identify for the record what is the contract
5 that is at issue in this litigation?

6 A. For customer 304744204?

7 Q. That's right.

8 A. It's the description of the charge. It's
9 a pooling agreement for several pieces of Xerox
10 equipment.

11 Q. Can you tell based upon the numbers what
12 the equipment was that was involved?

13 A. I provided the serial number of
14 equipment involved that we show an outstanding
15 balance for.

16 Q. My question though is whether you can
17 tell exactly or not even exactly, just tell me
18 what the equipment was that this contract relates
19 to?

20 A. I don't have a copy of the pooling
21 agreement as I indicated when I responded to this

1 interrogatory so I don't have a listing. I have
2 a listing of the serial numbers from the invoices
3 that it generated, but I don't have a copy of the
4 pooling agreement.

5 Q. What is a pooling agreement?

6 A. A pooling agreement typically is two
7 machines or more that are possibly under lease
8 and you are pooling the meter allowance.

9 Q. Okay.

10 A. So the underlying term lease agreement
11 is still in effect but the pooling agreement --
12 it saves the customer money by pooling their
13 meter allowance. I was not able to retrieve the
14 pooling agreement.

15 Whatever underlying term lease
16 agreements I was able to provide I provided.

17 Q. So what is the contract?

18 A. One of the contracts which I provided
19 under finance customer number 959392705 is a
20 lease agreement for a 6180. I can't make out the
21 serial number. I believe it's 8VE050996. The

1 the original was entered into. Not for sure
2 without the agreement to look at. I don't know.

3 Q. Let me show you a rental contract
4 here. And for purposes of identification we are
5 still on customer number 098665581.

6 I am showing a rental contract
7 concerning the equipment E3N061638 and
8 H3T010421.

9 Can you identify the rental agreement
10 at issue in this?

11 A. Rental agreement dated 11-7-97 between
12 Technigraphix and Xerox Corporation signed by
13 Jack Tiner monthly base \$1,960. No pick charges.

14 Q. What is the date on this agreement?

15 A. 11-7-97.

16 Q. Am I correct that you were suing Phoenix
17 Color based upon this rental agreement?

18 A. Yes.

19 Q. Why?

20 A. Probably because there is outstanding
21 invoices that relate to this rental agreement.

1 Q. But why are you suing Phoenix Color for
2 this agreement when Technigraphix is clearly
3 identified as the contracting party?

4 A. They bought the assets of Technigraphix.

5 Q. What makes you think they bought the
6 assets of Technigraphix?

7 A. There is a stock purchase.

8 Q. Is that your sole basis for why you are
9 suing Phoenix Color based upon this 1997
10 agreement with Technigraphix?

11 MR. FRIEDMAN: Objection. Sole basis
12 will be made known once we have had a chance to
13 review the documents which you turned over today
14 which we asked for a month ago.

15 MR. GAUMONT: Fair enough. She can
16 testify as far as she knows in terms of factual
17 basis. I am not asking for legal conclusions.
18 If her basis is based upon what she thinks may be
19 in the documents that we produced I would like
20 her to say so.

21 THE WITNESS: Repeat your question

1 A. I'm sorry. Again.

2 Q. Are there any other lease agreements
3 that Xerox is using in support of its claims on
4 behalf of customer number 098905946?

5 A. No.

6 Q. But there are two term leases identified
7 in your interrogatory responses; isn't that
8 right?

9 A. Yes. As I previously stated, I could
10 not retrieve a copy of a contract for the 6180
11 8VE01928. We discussed that before.

12 Q. With the XEEP number as it appeared in
13 the pooling agreement with 666742630?

14 A. Right. I stated I could not find the
15 contract or the pooling agreement nor the
16 underlying term lease agreement.

17 Q. Without having the contract how do you
18 know the terms and conditions?

19 A. Don't.

20 Q. Without having the contract how do you
21 know who signed the agreement on behalf of either

1 Technigraphix or Phoenix Color?

2 A. Without having a copy of the
3 agreement?

4 Q. Yes.

5 A. If the agreement was never modified the
6 information would be in our XEEP system. If that
7 agreement had never been modified then I would
8 have all the original information because it was
9 never modified.

10 Q. In your XEEP system?

11 A. Yes.

12 Q. Can you generally print out from the
13 XEEP system?

14 A. Yes.

15 Q. Have you done so?

16 A. No.

17 Q. Are you willing to do so and supplement
18 your discovery?

19 A. Yes.

20 Q. And just to be clear, you will be
21 producing printouts of the XEEP system?

1 A. Right. It would have bill to, install,
2 term of the contract, pretty much what you find
3 on an EOA. If an order agreement has never been
4 modified none of the data has been changed. So
5 if I didn't have a contract copy I could see the
6 date the order was signed. Who signed the
7 order. All that information would still be in
8 the system. I would produce that if I didn't
9 have a contract copy.

10 Q. Sitting here today do you know who
11 signed it?

12 A. Who signed the original agreement?

13 Q. Who signed --

14 A. For '95?

15 Q. Let me state the question clearly.

16 Sitting here today can you tell me who
17 signed the term lease agreement identified with
18 the XEEP number 953243706 for which Xerox is
19 claiming \$192,970.85 in Count II and as part of
20 the pooling to which Xerox is claiming \$94,583.35
21 in Count I?

1 A. In regard to the term lease agreement
2 sitting here today, no.

3 Q. Do you know what date the term lease
4 agreement was entered into?

5 A. I might be able to retrieve that
6 information from our XEEP system.

7 Q. Just to be clear --

8 A. As of right now, no.

9 Q. Just to be clear you are going to
10 produce all the printouts through the XEEP system
11 for all the lease agreements upon which you are
12 claiming against either Technigraphix or Phoenix
13 Color; isn't that right?

14 A. When you say all the printouts there is
15 quite a number of screens that have duplicitous
16 information.

17 Q. Okay.

18 A. I will provide -- if there are two
19 screens with the same information I will provide
20 -- as long as I provide you with the information
21 is that sufficient?

1 Q. Yes.

2 A. Okay.

3 Q. So long as it's the information you are
4 using in basing any position or any testimony
5 that you may have at trial.

6 A. Okay. I will print the XEEP screens for
7 that customer number.

8 Q. Let me refer you to the interrogatory
9 you supplied in response to number 14 of
10 Technigraphix's first set of interrogatories.

11 If we could have -- I would like to
12 have that set entered as an exhibit. It has
13 previously been marked as Exhibit 2.

14 In the interrogatory it asks, "Explain
15 why Xerox did not reclaim the copiers at issue in
16 this case after Technigraphix asked that you do
17 so."

18 And the answer, "Xerox had no
19 obligation to take back the equipment. There was
20 no cancellation provision in the lease."

21 As Xerox's corporate designee on the

1 A. It depends. Do you mean service like a
2 service technician or sales representative?

3 Q. I am talking about what we referred to
4 as sales representatives. I think Mr. Buckson
5 referred to them as account representatives. The
6 type of people that Mr. Nussbaum was.

7 A. I assume they go through some type of
8 training. All employees go through some type of
9 training.

10 Q. Has Xerox made any efforts to obtain the
11 materials that service representatives receive
12 when they go through this type of training?

13 A. Yes.

14 Q. Have you been successful in obtaining
15 the materials that service representatives
16 reference when they go through this type of
17 training?

18 A. Not yet, no. From what I found out
19 there were changes as to who conducted training.
20 It changed from year to year within years.

21 Also, this particular CBU there are a

1 lot of changes. I think it went from Metro -- I
2 don't remember the exact names, but it went
3 through a lot of changes. Asking certain
4 contract managers -- I asked who would perform
5 the training for an account representative or
6 sales rep and they said at some time it was the
7 contract manager. At other times it would be the
8 sales manager. At some times it would be
9 Leesburg but the responsibility changed back and
10 forth over the year depending on which year you
11 were discussing.

12 I am still trying to find out for the
13 time period are there any training materials
14 available that I can produce. I haven't finished
15 working on this. I haven't gotten yes, here it
16 is, and this is what we have. The only thing
17 that I -- there was nothing regarding negotiating
18 agreements that I could find. I found procedures
19 as to how to fill out an order agreement which I
20 produced, but not how to negotiate an agreement.
21 I haven't found anything that speaks to

1 negotiating an agreement.

2 Q. You have produced documents in response
3 to the request for Xerox's procedures as to how
4 to fill out these agreements during the time
5 period?

6 A. Yes. I think the ones I found it
7 doesn't go back to '93. I think the time frame
8 was going back to '93. I produced what I could
9 find which I think was '97 if I remember
10 correctly.

11 Q. Could you look through the documents
12 that you produced and find those?

13 A. I believe it would have been -- it
14 wasn't in the supplemental. It was probably two
15 pages and there was a cover sheet that said XOA
16 process, but it was produced. It was probably
17 only two pages.

18 Q. Ms. Gianola, we have an administrative
19 problem because we don't have Bate's numbers so
20 it's hard to talk with clarity.

21 With that in mind, are you willing to

1 reproduce to Mr. Friedman this two-page document
2 which can be brought to my attention about
3 Xerox's policies?

4 A. Yes.

5 Q. Does Xerox have a policy as to when a
6 lease becomes effective within the Xerox
7 organization?

8 A. When a lease becomes effective? What do
9 you mean effective?

10 Q. I am talking about who has authority to
11 bind Xerox into a lease agreement.

12 A. It would be our credit department. The
13 sales would take the order and submit it for
14 credit approval and once the credit department
15 approves the order it is then a contract. Once
16 the machine is shipped out.

17 Q. And is this essentially located in a
18 credit department or multiple credit departments?

19 A. There are multiple.

20 Q. Do you know which one handled the
21 Maryland, Washington CBU in 1999?

1 A. I believe it was our Louisville
2 office. It has changed over the years. It used
3 to be geographic and then they did it by market
4 segment. If I had to guess it would be our
5 Louisville office in '99.

6 Q. Is that the only way a lease agreement
7 becomes effective is if it's approved by the
8 credit department?

9 A. Yes.

10 MR. FRIEDMAN: Would this be a
11 convenient time to stop? I don't want to have
12 her miss her plane.

13 MR. GAUMONT: I don't want to have her
14 miss her plane either.

15 I will state for the record that this
16 deposition shall remain open. You are a 30(b)(6)
17 deponent on about ten different areas and I have
18 considerable more testimony to ask from you.

19 I ask you whether you are available to
20 continue this deposition in the near future?

21 THE WITNESS: Can we do it via telephone

1 or would I have to fly down again?

2 MR. GAUMONT: My preference is for you
3 to fly up considering the number of documents
4 that are at issue in this case, yes.

5 MR. FRIEDMAN: How much more time do you
6 have in your estimation?

7 MR. GAUMONT: I am not sure if I could
8 estimate an exact time but it would go into the
9 time when you have a flight to catch.

10 MR. FRIEDMAN: Can you give us hours. An
11 hour?

12 THE WITNESS: An additional two hours?

13 MR. GAUMONT: Somewhere in the two hour
14 range at most.

15 THE WITNESS: When would we have to have
16 this done by?

17 MR. GAUMONT: We would request an
18 extension of the discovery deadline and do so
19 within the next couple of weeks.

20 THE WITNESS: As long as you are
21 flexible I have other accounts and other cases I

1 am involved with. Other discovery deadlines I am
2 working with. I would make myself available as
3 long as you were flexible with the schedule.

4 MR. FRIEDMAN: She also has a small
5 child at home, 14 month old, which is why she
6 needs to get back.

7 MR. GAUMONT: I am sympathetic to
8 that. I have a six month old myself.

9 Why don't you go catch your plane.

10 (Whereupon, the proceeding was
11 suspended at 4:00 p.m.)
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1 STATE OF MARYLAND

2 SS:

3 I, BONNIE RUSSO, a Notary Public of the
4 State of Maryland, do hereby certify that the
5 within named, ROSALIA GIANOLA, personally
6 appeared before me at the time and place herein
7 set out, and after having been duly sworn by me,
8 was interrogated by counsel. I further certify
9 that the examination was recorded
10 stenographically by me and this transcript is a
11 true record of the proceedings.

12 I further certify that I am not of counsel
13 to any of the parties, nor an employee or
14 counsel, nor related to any of the parties, nor
15 in any way interested in the outcome of this
16 action.

17 As witness my hand and notarial seal this
18 17th day of March, 2003.

19
20 My commission expires:_____

21 August 25, 2004

Notary Public

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